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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,893	01/30/2004	Shinichi Takahashi	03670.002260	4193

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NEW YORK, NY 10112

EXAMINER

POND, ROBERT M

ART UNIT	PAPER NUMBER
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3625

MAIL DATE	DELIVERY MODE
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02/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/766,893	Applicant(s) TAKAHASHI ET AL.	
	Examiner Robert M. Pond	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/26/07;12/20/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-14, 35-37, 58-60, 81-83, 93-98, 100-107, 109-116, 118-125, 127 and 128 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/20/07</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 12-14,35-37,58-60,81-83,93-98,100-107,109-116,118-125,127 and 128.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection.

Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 20 December 2007 has been entered.

Response to Amendment

Applicants amended claims 12-14, 35-37, 58-60, 81-83, 93-98, 100-107, 109-116, 118-125, 127 and 128. Claims 1-11, 15-34, 38-57, 61-80, 84-92, 99, 108, 117 and 126 were canceled. All pending claims 12-14, 35-37, 58-60, 81-83, 93-98, 100-107, 109-116, 118-125, 127 and 128 were examined in this non-final office action.

Response to Arguments

Applicant's arguments, see Remarks, filed 20 December 2007, with respect to the rejection(s) of claim(s) 2-14, 35-37, 58-60, 81-83, 93-98, 100-107, 109-116, 118-125, 127 and 128 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further

consideration, a new ground(s) of rejection is made in view of Sone and supporting references. Applicants' amended language to all independent claims necessitated new grounds of rejection. Arguments pertaining to Aklepi as the base reference are moot.

Rejections under 35 USC 112 are withdrawn due to amendment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 12-14, 35-37, 58-60, 81- 83, 93, 95, 102, 104, 111, 113, 120 and 122 are rejected under 35 USC 102(e) as being anticipated by Sone (US 7,222,081).

Sone teaches all the limitations of claims 12-14, 35-37, 58-60, 81- 83, 93, 95, 102, 104, 111, 113, 120 and 122 . For example, Sone discloses a system and methods of continuously monitoring and updating delivery schedules based on customer modifications. See at least abstract; Figs. 1-6; col. 1-col. 3. Sone further discloses:

- Regarding claim 35. calculating a plurality of estimated time of arrivals to a plurality of destinations for at least one in-transit unit having the product

number, ETAs are calculated for each in-transit delivery (see at least Fig. 1, Fig. 2; col. 5, lines 17-48); product number used for tracking (see at least Fig. 5; col. 8, lines 50-53), and a due date associated with the plurality of estimated time of arrivals by which a diversion request must be completed to cause the quantity of in-transit units to be diverted, prior notice time determined that indicates the amount of prior notice requested by the customer before a delivery is attempted; determining how far in advance to notify the customer. Default time established if not specified (see at least col. 5, lines 49-54; col. 6, lines 64-66), wherein the diversion request is based in part on the estimated time of arrivals; diversion request based in part of ETAs. See at least Fig. 3A-B; col. 6, line 48-col. 7, line 21.

- Regarding claim 35. transmitting product inquiry information including the product number; system determines whether a customer has placed a request for a different delivery time or location. See at least Fig. 3B (68); col. 7, lines 7-8.
- Regarding claim 35. receiving the plurality of estimated time of arrivals and the due date; recalculates ETA for the changed delivery as well as the remaining deliveries. See at least col. 7, lines 38-48.
- Regarding claim 35. and transmitting the diversion request to cause the quantity of in-transit units to be diverted. System notifies delivery employee of changes. See at least Fig. 3B (78, 80); col. 8, lines 4-7.

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- Regarding claim 36. acknowledgement that delivery has been diverted to final destination. See at least Fig. 4; col. 8, lines 16-34.
- Regarding claim 37. receiving a product purchase order including the product number, the quantity, and a customer identifier; service receives the purchase order (item or item(s), product tracking number, customer ID or name) (see at least Fig. 5; col. 8, line 40-col. 9, line 3), and transmitting an acknowledgement that the product purchase order has been accepted. goods purchased online must be given to a delivery service (see at least col. 1, lines 23-28; implied that purchase order is accepted by delivery service), diverting the quantity of in-transit units of that product number to a final destination based on the customer identifier. Customer enters customer ID or product number or name to divert shipment. See at least Fig. 5 (90).
- Regarding claim 102. as noted above.
- Regarding claim 104. collecting inventory information and transmitting a current inventory value for one of the plurality of destinations. Aware of amount of deliveries for each delivery location. See at least col. 6, lines 28-37.
- Regarding claims 12-14, 58-60, 81- 83, 93, 95, 111, 113, 120 and 122, rejections are based on the disclosures as noted above.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 94, 96, 103, 105, 112, 114, 121 and 123 are rejected under 35 USC 103(a) as being unpatentable over Sone (US 7,222,081) in view of Suzuki (US 6,470,323).

- Regarding method claim 103, Sone teaches all the above as noted under the 102(e) rejection and teaches i) making an online purchase, ii) delivering an amount of product to a delivery destination associated with a customer name or customer ID and iii) making changes to delivery time or location while the shipment is in-transit. Although Sone does not mention collecting sales history information and transmitting a sales history value corresponding to one the plurality of destinations, Suzuki teaches a goods sales management system making decisions based on customer purchase history and delivery history. See at least abstract; Fig. 1; col. 1, lines 50-55. One of ordinary skill in the art at time the invention was made would have recognized that applying the known technique of Suzuki would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the technique of Suzuki to the teachings of Sone would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied

shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

- Regarding claims 94, 112 and 121, rejections are based on the same rationale as noted above for claim 103.
- Regarding method claim 105, Sone teaches all the above as noted under the 102(e) rejection and teaches i) delivering an amount of product to a delivery destination and ii) making changes to delivery time or location while the shipment is in-transit. Although Sone does not mention collecting back order information and transmitting a current back order value for one of the plurality of destinations, Suzuki on the other hand teaches transmitting out-of-stock messages to customers and ordered-goods-arrival messages (note: backordered goods have arrived). See at least Fig. 7 and 8; col. 4, lines 47-52. One of ordinary skill in the art at time the invention was made would have recognized that applying the known technique of Suzuki would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the technique of Suzuki to the teachings of Sone would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35

USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

- Regarding claims 96, 114, and 123, rejections are based on the same rationale as noted above for claim 105.

3. Claims 100, 101, 109, 110, 118, 119, 127 and 128 are rejected under 35 USC 103(a) as being unpatentable over Sone (US 7,222,081) in view of Jenkins (US 20020188499, IDS entered 20 December 2007).

- Regarding method claims 109 and 110, Sone teaches all the above as noted under the 102(e) rejection and teaches i) delivering an amount of product to a delivery destination and ii) making changes to delivery time or location while the shipment is in-transit. Although Sone does not mention calculating a suggested quantity of in-transit units to divert to one of the plurality of destinations. Jenkins on the other hand teaches a system and methods used to optimally resolve conflict between companies with regards to product availability and further teaches making recommendations to customers based on shipment allocation determination calculations taking into consideration inventory constraints and other factors. See at least abstract; 0027, 0029, 0057, 0088, 0138. One of ordinary skill in the art at time the invention was made would have recognized that applying the known technique of Jenkins would have yielded predictable results and resulted in an improved system. It would

have been recognized that applying the technique of Jenkins to the teachings of Sone would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

- Regarding claims 100, 101, 118, 119, 127 and 128, rejections are based on the same rationales as noted above for claims 109 and 110.

4. Claims 97, 98, 106, 107, 115, 116, 124 and 125 are rejected under 35 USC 103(a) as being unpatentable over Sone (US 7,222,081) in view of Aklepi (US 6,795,823).

- Regarding method claims 106 and 107, Sone teaches all the above as noted under the 102(e) rejection and teaches i) delivering an amount of product to a delivery destination and ii) making changes to delivery time or location while the shipment is in-transit. Although Sone does not mention a quantity of in-transit units is represented by a number or containers holding the at least one in-transit unit; transmitting Aklepi on the other hand teaches article routing and tracking system and method for optimally routing an article through a network of processing stations, and can recalculate the route at every stop based on updated information. See at least abstract; Fig. 1; col. 1, line 5 through col. 6, line 41. Aklepi provides a

system and method to de-consolidate an in-transit shipment of an article or plurality of articles and provide estimated time of arrivals for each de-consolidated article of an optimized route. Aklepi further teaches containers containing in-transit articles (i.e. item, units) representing a quantity of in-transit units and being able to track an article within a container. See at least col. 8, line 16-col. 10, line 12. One of ordinary skill in the art at time the invention was made would have recognized that applying the known technique of Aklepi would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the technique of Aklepi to the teachings of Sone would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems.

Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

- Regarding claims 97, 98, 115, 116, 124 and 125, rejections are based on the same rationales as noted above for claims 106 and 107.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert M. Pond/
Primary Examiner, Art Unit 3625
February 15, 2008